YEO CHU HUI

v.

LIM CHENG JIN (F) & ANOR.

HIGH COURT, KUALA LUMPUR
DATO' HAJI ABDUL MALEK BIN HAJI AHMAD J.
[CIVIL SUIT NO. D5-22-1815-91]
12 FEBRUARY 1993

PRACTICE & PROCEDURE: Application to strike out statement of claim - Whether plaintiff's claim barred by limitation - Consideration of ss. 6 & 22 Limitation Act 1953 - Whether a defence of limitation could be used to strike out a claim under O. 18 r. 19 Rules of the High Court 1980 as disclosing no reasonable cause of action.

The defendants applied to strike out the plaintiff's writ of summons and statement of claim pursuant to O. 18 r. 19 Rules of the High Court 1980 (RHC 1980) on the grounds that it disclosed no reasonable cause of action, that it was frivolous or vexatious or that it was otherwise an abuse of the process of the Court.

On the facts, the issue raised before the Court was whether the present suit was statute barred by limitation considering the fact that the plaintiff's right of action had accrued on 6 April 1981. This was dependent upon whether the plaintiff's claims fell under s. 6 or s. 22 of the Limitation Act 1953 (the Act).

Held:

[1] The prayers in the statement of claim fall under the purview of s. 22(1) of the Act and not under s. 6(1) of the Act and as such no period of limitation applies. Section 22(1) is an exception to s. 6(1) of the Act and s. 22(2) has no application as the claims in this action comes under the trust property cases in s. 22(1) of the Act.

[2] Statutes of limitation merely bar a plaintiff's remedy and not his cause of action, and since a limitation defence when pleaded might be subject to exceptions, a defendant could never apply under O. 18 r. 19 RHC 1980 to strike out a claim against him as disclosing no reasonable cause of action merely because he might have a good limitation defence.

[Defendants application to strike out plaintiff's suit dismissed with costs].

Cases referred to:

Low Kum Yoon v. Teh Kim Huah [1979] 1 MLJ 83 ***(refd)***

Hourigan v. The Trustees Executors And Agency Company Limited And Others [1934] 51 CLR 619 ***(refd)***

Toh Hock Thye & Ors. v. Toh Chwee Biow [1982] 1 MLJ 152 / [1981] CLJ 87 ***(refd)***

Vasudevan v. T. Damodaran & Anor. [1981] 2 MLJ 150 / [1981] CLJ 84 ***(refd)***

Loh Holdings Sdn. Bhd. v. Peglin Development Sdn. Bhd. & Anor. [1984] 2 MLJ 105 / [1984] 2 CLJ 88 ***(refd)***

Birkett v. James [1977] 2 All ER 801 ***(refd)***

Ronex Properties Ltd. v. John Laing Construction Ltd. & Ors. (Clarke, Nicholls & Marcel (a firm), third parties) [1982] 3 All ER 961 ***(foll)***

Legislation referred to:

Limitation Act 1953, ss. 6(1), 22(1)(2)
Rules of the High Court 1980, O. 18 r. 19

Other sources referred to:

Halsbury's Laws Of England, 4th Edn. Vol. 28, para 833

For the plaintiff - C.T. Wong; M/s. Iza Ng Yeoh & Kit
For the defendants - M. Nagarajah; M/s. Shook Lin & Bok

JUDGMENT

Haji Abdul Malek bin Haji Ahmad J:

In their statement of claim filed on 28 December 1991, the plaintiff had asked for a declaration that the 89,999 fully paid up ordinary shares of RM1 each in the capital of Chyeo Sdn. Bhd. now registered in the name of the first defendant are held by the first defendant as nominee and/or trustee for the plaintiff absolutely, a declaration that the 1 (one) share of RM1 now standing in the name of the second defendant is held by the second defendant as nominee and/or trustee for the plaintiff absolutely, an order that the first and second defendants do execute the transfer of the said 89,999 shares and I share respectively to the plaintiff or to the plaintiff's nominee and deliver to the plaintiff or his nominee the respective certificates for the said shares and do all things necessary for vesting the same in the name of the plaintiff or his nominee or as he shall direct, that pending the transfer of the said shares the first and second defendants, Their servants or agents be restrained from selling, disposing or dealing in the shares howsoever and from parting with possession of the certificates for the said shares, damages for wrongful detention of the said share certificates, further and or in the alternative damages, costs and further or other relief as the Court deems fit.

By a summons in chambers filed upon a certificate of urgency on 9 April 1992, the defendants had applied for the plaintiff's writ of summons and statement of claim to be struck out pursuant to O. 18 r. 19(1) of the Rules of the High Court 1980 (hereinafter "the Rules") on the grounds that it discloses no reasonable cause of action, that it is frivolous or vexatious or that it is otherwise an abuse of the process of the Court, and costs.

As eloquently enunciated by learned Counsel for the defendants, the plaintiff had in fact filed an identical suit against them *vide* Kuala Lumpur High Court Civil Suit C1687/82 (hereinafter "the earlier suit") dated 3 September 1982 and filed five days later. On the application of the defendants, the earlier suit had been struck out by the Court on 13 September 1989 for want of prosecution. That decision was appealed against and the Supreme Court had dismissed it with costs on 21 May 1991.

Subsequent to that, the first defendant had applied to remove the plaintiff as director at an Extraordinary General Meeting and the plaintiff had accordingly filed an injunction in this suit, upon a certificate of urgency, on 2 January 1992 to restrain the defendants from proposing, moving, seconding, voting, adopting, passing or attempting to do so at the requisitioned Extraordinary General Meeting and other consequential orders. Pending the injunction hearing, the Extraordinary General Meeting had not been held and the plaintiff had not been removed. On these facts, the only issue raised here is whether the present suit is statute barred by limitation considering the fact, as candidly canvassed by learned Counsel for the defendants, that the right of action had accrued on 6 April 1981.

However, my view was that, considering the prayers in the statement of claim, the plaintiff's case fell not under s. 6 of the Limitation Act 1953 (hereinafter "the Act") but under s. 22 thereof. It is pertinent to reproduce here the relevant subsection (1) of s. 6 and subsections (1) and (2) of s. 22 respectively:

> 6. (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -
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> (a) actions founded on a contract or on tort;
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> (b) actions to enforce a recognisance;
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> (c) actions to enforce an award;
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> (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.
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> 22. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action -
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> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
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> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
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> (2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:
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> Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

In particular, subsection (1) of s. 6 starts off with "Save as hereinafter provided" and this means it is subject to exceptions later in the Act namely like the one in subsection (1) of s. 22. To my mind, subsection (1) of s. 22, in particular paragraph (b), covers the claim in this case and no period of limitation applies. Learned Counsel for the defendants had reiterated, quite rightfully I might add, that in view of subsection (2) of s. 22, both limbs of paragraph (b) of subsection (1) thereof have to be satisfied. I must stress here that I am in full agreement with him although not the same words had been used. In fact, I am of the opinion that it covers paragraph (a) of subsection (1) as well. However, all what subsection (2) of s. 22 is trying to get across is that there are exceptions to subsection (1) of s. 22 if they fall under "an action for which a period of limitation is prescribed by any other provision of this Act" but to categorise it as falling under s. 6 of the Act would certainly render both ss. 6 and 22 meaningless for this sort of claim. The only inference has to be that subsection (1) of s. 22 is actually an exception to subsection (1) of s. 6

of the Act. The effect of subsection (2) of s. 22 has been aptly clarified in Halsbury's Laws of England 4th Ed Vol. 28 at paragraph 833 where it states that if the action is not one that comes under the trust property cases in subsection (1) of s. 22, the mere fact that property is trust property does not prevent time from running. Here, of course, my finding is that it comes under the trust property cases in subsection (1) of s. 22 of the Act.

In any case, in *Ronex Properties Ltd. v. John Laing Construction Ltd. and others* (Clarke, Nicholls & Marcel (a firm), third parties) [1982] 3 All ER 961, it had been held that since statutes of limitations merely barred a plaintiff's remedy and not his cause of action, and since a limitation defence when pleaded might be subject to exceptions, a defendant could never apply under O. 18 r. 19 of the Rules to strike out a claim against him as disclosing no reasonable cause of action merely because he might have a good limitation defence.

As my considered opinion is that the prayers in the statement of claim fall under the purview of subsection (1) of s. 22 and not under subsection (1) of s. 6 of the Act and that limitation can never be a reason to strike out a claim, my conclusion is that no period of limitation applies and the defendant's application to strike the suit out fails. It is therefore accordingly dismissed with costs.